

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Papen DATE TYPED 3/5/2005 HB _____

SHORT TITLE Clarify Minimum Wage for Tipped Employees SB 250/aSFC

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 178

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Labor (DOL)
 Office of Workforce Training Development (OWTD)
 Economic Development Department (EDD)
 Attorney General (AG)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 250 increases the minimum wage for tipped employees. The tips combined with the employer's cash wage shall not equal less than \$5.60 per hour. Prior to the amendment the amount was the same as the minimum wage of \$5.15 per hour. Also an "Applicability" section is added for the provisions of the act to begin after July 1, 2005.

Synopsis of Original Bill

Senate Bill 250 amends the calculation of a minimum wage for employees who receive tips by eliminating the reference to a tip credit cap. The bill requires a minimum hourly wage of \$5.15 made up from an employer's cash wage of \$2.13 with the remainder assumed to be tips earned

by workers who routinely receive more than \$30.00 per month in tips.

Payment of time and a half is required for each hour worked over forty hours in a standard work week.

Significant Issues

DOL supports the passage of this legislation because of the conflict between limiting tip credits and cash wages to a total amount not equal to the mandated minimum wage. The Labor Department's Labor and Industrial Division note that this creates an administrative problem as they need to choose between two conflicting provisions for enforcement purposes. The department must seek judicial intervention if a dispute between employer and employee cannot be resolved at the administrative level.

This bill, according to EDD, does not provide a standardized mechanism to determine probable amount of tips received by employees and depends totally on employee reporting. Tipped employees are required by Federal Tax Laws to report a minimum percentage of gross sales during their shift.(In 2004 it was 8%) Employers are accountable for paying payroll taxes on that amount.

DUPLICATION

SB 250 duplicates HB 178

OTHER SUBSTANTIVE ISSUES

EDD points out that the bill does not state in the event that the combined hourly rate and tipped income do not meet the minimum wage of \$5.15, that the employer is responsible to raise the minimum hourly wage of \$2.13 to an amount that when combined with tipped income equals \$5.15.

WB/sb:lg:rs